



Rule(s) Review Checklist Addendum
(This form must be filled out electronically.)

This form is to be used only if the rule(s) was/were previously reviewed, and has/have not been amended/repealed subsequent to that review.

All responses should be in **bold** format.

Document(s) Reviewed (include title): **WAC 458-20-171 (Building, repairing or improving streets, roads, etc., which are owned by a municipal corporation or political subdivision of the state or by the United States and which are used primarily for foot or vehicular traffic.)**

Date last reviewed: **August 27, 1999**

Reviewer: **Mark Mullin**

Date current review completed: **April 17, 2003**

Briefly explain the subject matter of the document(s): **This rule explains the application of B&O, retail sales, and use taxes to the activity of public road construction.**

Type an "X" in the column that most correctly answers the question, and provide clear, concise, and complete explanations where needed.

1. Public requests for review:

YES	NO	
	X	Is this document being reviewed at this time because of a public (e.g., taxpayer or business association) request?

If "yes," provide the name of the taxpayer/business association and a brief explanation of the issues raised in the request.

2. Related statutes, interpretive and/or policy statements, court decisions, BTA decisions, and WTDs: (Excise Tax Advisories (ETAs), Property Tax Advisories and Bulletins (PTAs/PTBs), and Interim Audit Guidelines (IAGs) are considered interpretive and/or policy statements.)

YES	NO	
	X	Are there any statutory changes subsequent to the previous review of this rule that should be incorporated?
X		Are there any interpretive or policy statements not identified in the previous review of this rule that should be incorporated? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
	X	Are there any interpretive or policy statements that should be repealed because the information is currently included in this or another rule, or the



		information is incorrect or not needed? (An Ancillary Document Review Supplement should be completed for each and submitted with this completed form.)
X		Are there any Board of Tax Appeals (BTA) decisions, court decisions, or Attorney General Opinions (AGOs) subsequent to the previous review of this rule that provide information that should be incorporated into this rule?
X		Are there any administrative decisions (e.g., Appeals Division decisions (WTDs)) subsequent to the previous review of this rule that provide information that should be incorporated into the rule?
X		Are there any changes to the recommendations in the previous review of this rule with respect to any of the types of documents noted above? (An Ancillary Document Review Supplement should be completed if any changes are recommended with respect to an interpretive or policy statement.)

If the answer is “yes” to any of the questions above, identify the pertinent document(s) and provide a brief summary of the information that should be incorporated into the document.

Information from the following ETAs not identified in the previous review should be incorporated into the rule:

- **ETA 262 (Snow removal and power sweeping of parking lots).** This document contains information about the taxability of, among other activities, the power sweeping and/or snow removal of publicly-owned streets and sidewalks.
- **ETA 365 (Dump truck operators).** This document contains information about the tax applications to dump truck operators. It provides that the excavating, filling, hauling and tailgate spreading to specification on public road jobs (except state-owned roads) is taxed under the public road construction classification of the B&O tax.

Information from the following ETA should be incorporated into the rule despite the fact that the previous review of the ETA recommended that it should be left as is:

- **ETA 484 (Corporation and stockholder distinct entities for business and occupation tax purposes).** This document explains the tax consequences where a sole proprietorship entered into a public road construction contract. The sole proprietorship was subsequently incorporated, with the sole proprietor as the majority stockholder. The corporation performed the actual work, and the sole proprietorship remained liable under the contract.

Information from the following court opinion should be incorporated into the rule:

- ***Port of Seattle v. Dep't of Rev.*, 101 Wn. App. 106 (2000).** This case addressed the issue of whether the Port of Seattle was entitled to a refund of sales tax paid on the construction of improvements to the Sea Tac airport terminal. The court held that because the statute containing a tax exemption for "mass public transportation terminal(s)" refers only to ground transportation, the Legislature did not intend to give a tax exemption for an airport terminal.

Information from the following BTA decision not identified in the previous review should be incorporated into the rule, provided that the Department acquiesces in the decision:



- *Pierce Cy. v. Dep't of Rev.*, BTA Docket No. 94-44 (1995) (whether charges for repair and improvement of a fish weir are exempt from sales tax when the fish weir is necessary to maintain a county road and is located within a permanent easement adjacent to the road).

Information from the following WTDs not identified in the previous review should be incorporated into the rule:

- Det. No. 99-263, 19 WTD 307 (2000) (contractor who installs lines that collect water from downspouts on houses to drain the downspouts into sewer catch basins protests the reclassification of its income from public road construction B&O tax to retailing B&O tax, and the imposition of retail sales and use taxes).
- Det. No. 99-135E, 19 WTD 160 (2000) (a county contends that construction work done on state-owned wetlands, in mitigation for the loss or deterioration of wetlands elsewhere in the county due to county road construction, qualifies as public road construction).
- Det. No. 98-165, 19 WTD 122 (2000) (taxpayer, an operator of water trucks for a variety of government and private construction projects, protests the reclassification of his income to retailing B&O tax and the imposition of retail sales tax).
- Det. No. 90-108, 9 WTD 231 (1990) (whether a taxpayer who receives "rebates" or credits from the U. S. Forest Service for building logging roads in connection with a timber harvest operation is engaged in taxable road construction).
- Det. No. 88-389, 6 WTD 465 (1988) (taxpayer petitioned for a ruling that certain work relating to the construction of a sewer system and a drainage system be classified as "the constructing of a drainage system in streets and roads" under WAC 458-20-171).
- Det. Nos. 87-129A & 85-125A, 6 WTD 317 (1988) (does the use tax apply to the value of materials provided by a public road construction subcontractor who defaults on the installation work, leaving it to be performed by the prime road contractor).
- Det. No. 88-183, 5 WTD 311 (1988) (taxpayer requests a determination of the correct tax classification for its business of providing "pilot car" and "flagging" services).
- Det. No. 88-147, 5 WTD 147 (1988) (taxpayer protests Department's reclassification of income derived from the installation of a storm drainage system from public road construction B&O tax to retailing B&O tax and the imposition of retail sales tax).

3. Additional information: Identify any additional issues (other than those noted above or in the previous review) that should be addressed or incorporated into the rule. Note here if you believe the rule can be rewritten and reorganized in a more clear and concise manner.

This rule can be rewritten and reorganized in a more clear and concise manner. This rule should be rewritten in the Department's current user-friendly format. Also, the definition section could be eliminated and the definitions incorporated throughout the rule as appropriate or via a question-and-answer format.

Relevant information contained in the Construction Tax Guide 2002 should be incorporated into the rule.

Information contained in WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee) should be incorporated into the rule.



4. Listing of documents reviewed: The reviewer need identify only those documents that were not listed in the previous review of the rule(s). Use “bullets” with any lists, and include documents discussed above. Citations to statutes, interpretive or policy statements, and similar documents should include titles. Citations to Attorney General Opinions (AGOs) and court, Board of Tax Appeals (BTA), and Appeals Division (WTD) decisions should be followed by a brief description (i.e., a phrase or sentence) of the pertinent issue(s).

Statute(s) Implemented: **To the extent the following are related to construction activities.**

- **RCW 82.04.040 ("Sale," "casual or isolated sale.")**
- **RCW 82.04.051 ("Services rendered in respect to" -- Taxation of hybrid or subsequent agreements.)**
- **RCW 82.04.110 ("Manufacturer.")**
- **RCW 82.04.120 ("To manufacturer.")**
- **RCW 82.04.280 (Tax on printers, publishers, highway contractors, extracting or processing for hire, cold storage warehouse or storage warehouse operation, insurance general agents, radio and television broadcasting, government contractors -- Cold storage warehouse defined -- Storage warehouse defined -- Periodical or magazine defined.)**

Interpretive and/or policy statements (e.g., ETAs, PTAs, and IAGs):

- **ETA 262 (Snow removal and power sweeping of parking lots)**
- **ETA 365 (Dump truck operators)**
- **ETA 484 (Corporation and stockholder distinct entities for business and occupation tax purposes).**

Court Decisions:

- ***Port of Seattle v. Dep't of Rev.*, 101 Wn. App. 106 (2000).** This case addressed the issue of whether the Port of Seattle was entitled to a refund of sales tax paid on the construction of improvements to the Sea Tac airport terminal. The court held that because the statute containing a tax exemption for "mass public transportation terminal(s)" refers only to ground transportation, the Legislature did not intend to give a tax exemption for an airport terminal.

Board of Tax Appeals Decisions (BTAs):

- ***Traffic Expeditors, Inc. v. Dep't of Rev.*, BTA Docket No. 96-83 (1998)** (whether that part of taxpayer's business of providing flagging, pilot car, and other traffic control activities for prime contractors on roads owned by governmental entities other than the state of Washington should be classified as public road construction pursuant to RCW 82.04.280 and WAC 458-20-171).
- ***Pierce Cy. v. Dep't of Rev.*, BTA Docket No. 94-44 (1995)** (whether charges for repair and improvement of a fish weir are exempt from sales tax when the fish weir is necessary to maintain a county road and is located within an easement adjacent to the county road).

Appeals Division Decisions (WTDs):



- **Det. No. 01-178, 21 WTD 240 (2002)** (is a county's contract with a contractor for the construction of a bridge subject to retail sales tax when the contract is referred to in an attachment as an "hourly equipment rental and labor contract").
- **Det. No. 00-170, 20 WTD 385 (2001)** (taxpayer protests the assessment of public road construction B&O tax assessed on payments/credits received from a city for utility hook-up fees and stormwater treatment system connection fees).
- **Det. No. 00-028, 20 WTD 32 (2001)** (taxpayer protests the assessment of use tax on materials used in public highway construction).
- **Det. No. 99-263, 19 WTD 307 (2000)** (contractor who installs lines that collect water from downspouts on houses to drain the downspouts into sewer catch basins protests the reclassification of its income from public road construction B&O tax to retailing B&O tax, and the imposition of retail sales and use taxes).
- **Det. No. 99-135E, 19 WTD 160 (2000)** (a county contends that construction work done on state-owned wetlands, in mitigation for the loss or deterioration of wetlands elsewhere in the county due to county road construction, qualifies as "public road construction").
- **Det. No. 98-165, 19 WTD 122 (2000)** (taxpayer, an operator of water trucks for a variety of government and private construction projects, protests the reclassification of his income to retailing B&O tax and the imposition of retail sales tax).
- **Det. No. 90-108, 9 WTD 231 (1990)** (whether a taxpayer who receives "rebates" or credits from the U. S. Forest Service for building logging roads in connection with a timber harvest operation is engaged in taxable road construction).
- **Det. No. 88-389, 6 WTD 465 (1988)** (taxpayer petitioned for a ruling that certain work relating to the construction of a sewer system and a drainage system be classified as "the constructing of a drainage system in streets and roads" under WAC 458-20-171).
- **Det. Nos. 87-129A & 85-125A, 6 WTD 317 (1988)** (does the use tax apply to the value of materials provided by a public road construction subcontractor who defaults on the installation work, leaving it to be performed by the prime road contractor).
- **Det. No. 88-183, 5 WTD 311 (1988)** (taxpayer requests a determination of the correct tax classification for its business of providing "pilot car" and "flagging" services).
- **Det. No. 88-147, 5 WTD 147 (1988)** (taxpayer protests Department's reclassification of income derived from the installation of a storm drainage system from public road construction B&O tax to retailing B&O tax and the imposition of retail sales tax).
- **Det. No. 86-264, 1 WTD 229 (1986)** (taxpayer protests the assessment of use tax on materials purchased for public road construction for a city highway project, arguing that the Department should enforce collection of the tax against the city because the city referred the taxpayer to an employee of the Washington Department of Transportation who gave erroneous tax advice causing the taxpayer's bid not to include the costs for sales and use taxes on materials).

Attorney General Opinions (AGOs): **None.**

Other Documents (e.g., special notices or Tax Topic articles, statutes or regulations administered by other agencies or government entities, statutes, rules, or other documents that were reviewed but were not specifically relevant to the subject matter of the document being reviewed):

- **Construction Tax Guide 2002**
- **WAC 458-20-223 (Persons performing contracts on the basis of time and material, or cost-plus-fixed-fee.)**



5. Review Recommendation:

- ☒ **Amend**
- ☐ **Repeal/Cancel** (Appropriate when action is not conditioned upon another rule-making action or issuance of an interpretive or policy statement.)
- ☐ **Leave as is** (Appropriate even if the recommendation is to incorporate the current information into another rule.)
- ☐ **Begin the rule-making process for possible revision.** (Applies only when the Department has received a petition to revise a rule.)

Explanation of recommendation: Provide a brief summary of your recommendation, whether the same as or different from the original review of the document(s). If this recommendation differs from that of the previous review, explain the basis for this difference.

If recommending that the rule be amended, be sure to note whether the basis for the recommendation is to:

- Correct inaccurate tax-reporting information now found in the current rule;
- Incorporate legislation;
- Consolidate information now available in other documents (e.g., ETAs, WTDs, court decisions); or
- Address issues not otherwise addressed in other documents (e.g., ETAs, WTDs, court decisions).

This rule should be amended to incorporate information available in other documents identified in this and the previous review of the rule. Also, the rule should be amended to incorporate legislation that clarified the meaning of "services in respect to constructing. "

6. **Manager action:** Date: 4/28/03

AL Reviewed and accepted recommendation

Amendment priority:

- ☐ 1
☒ 2
☐ 3
☐ 4